STATE OF MICHIGAN

COURT OF APPEALS

SUSAN HEDGLEN, Personal representative of the ESTATE OF ANGELA MARIE HEDGLEN, deceased,

Plaintiff-Appellant,

v

JERRY KOKESH, d/b/a DON'S AUTOMOTIVE, MATTHEW HOUSER, RICHARD RAPSON, and SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS,

Defendants,

and

SHARON A. DENK,

Defendant-Appellee.

UNPUBLISHED
October 24, 2006

No. 270164
Schoolcraft Circuit Court
LC No. 04-003583-NI

Before: Whitbeck, C.J., and Murphy and Smolenski, JJ.

PER CURIAM.

In this suit arising out of a fatal automobile accident, plaintiff appeals as of right from an order granting summary disposition for defendant Sharon Denk[1] under MCR 2.116(C)(7) and (C)(10) based on government immunity. See MCL 691.1407(2). We affirm.

On the day of the accident, Matthew Houser was driving his father's van, in which the decedent was a passenger, westbound along a highway. Earlier in the day another vehicle had slid off the highway and into a ditch. Defendant responded to the earlier accident and was directing traffic while a wrecker extracted the disabled vehicle. In order to let eastbound traffic proceed around the wrecker, defendant stopped the westbound traffic. Houser testified that, as a

---

[1] Defendants Jerry Kokesh, d/b/a Don's Automotive, Matthew Houser, Richard Rapson, and the Sault Ste. Marie Tribe of Chippewa Indians are not parties to this appeal. Therefore, we shall use "defendant" to refer only to Sharon Denk.

result of reduced visibility from blowing snow, he did not see that the westbound traffic had been stopped until he was approximately 200 feet from a truck halted in the westbound lane. He further testified that, when he finally realized that the truck was not moving, he was unable to stop due to the icy conditions. The decedent died of injuries sustained after the van collided with the truck.

Plaintiff sued defendant alleging that her failure to follow departmental policy and rules while directing traffic prior to the fatal accident constituted gross negligence that was the proximate cause of the decedent's injuries and, therefore, that defendant was not immune from suit under MCL 691.1407(2). The trial court concluded that defendant's alleged gross negligence was not the proximate cause of the accident and granted summary disposition in her favor. This appeal followed.

Plaintiff argues that the trial court erred when it concluded that defendant was entitled to summary disposition based on governmental immunity. We disagree.

A trial court's decision on a motion for summary disposition is reviewed de novo. *Collins v Comerica Bank*, 468 Mich 628, 631; 664 NW2d 713 (2003). Summary disposition under MCR 2.116(C)(7) is appropriate if the claim is barred by immunity granted by law. *Baker v Couchman*, 271 Mich App 174, 178-179; 721 NW2d 251 (2006). In reviewing a motion under MCR 2.116(C)(7), a court must consider all the documentary evidence submitted by the parties and accept as true the allegations of the complaint unless they are specifically contradicted by affidavits or documents. *Bryant v Oakpointe Villa Nursing Centre, Inc*, 471 Mich 411, 419; 684 NW2d 864 (2004).

A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). Summary disposition should be granted under MCR 2.116(C)(10) if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Babula v Roberson*, 212 Mich App 45, 48; 536 NW2d 834 (1995). A genuine issue of material fact exists when, giving the benefit of reasonable doubt to the opposing party, the record leaves open an issue upon which reasonable minds could differ. *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

MCL 691.1407(2) provides immunity from suit to governmental employees while in the course of employment if (1) the employee is acting or reasonably believes he or she is acting within the scope of his or her authority, and (2) the governmental agency is engaged in the exercise or discharge of a governmental function, and (3) the employee's conduct does not amount to gross negligence that is the proximate cause of the injury or damage. Each of the three conditions must be satisfied before the governmental employee will be entitled to immunity. *Id.*; see also *Baker*, *supra* at 184.

In the present case, the parties do not dispute that the first two conditions were met. Therefore, defendant will be entitled to governmental immunity unless her conduct amounted to gross negligence that was the proximate cause of plaintiff's injuries. *Curtis v Flint*, 253 Mich App 555, 562-563; 655 NW2d 791 (2002) (citation omitted). "'Gross negligence' means conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." MCL 691.1407(7)(a). "[E]vidence of ordinary negligence does not create a material question of

fact concerning gross negligence. . . . To hold otherwise would create a jury question premised on something less than the statutory standard." *Maiden v Rozwood*, 461 Mich 109, 122-123; 597 NW2d 817 (1999).

> [T]he phrase "the proximate cause," as used in MCL 691.1407(2)(c), is not synonymous with "a proximate cause," and . . . to impose liability on a governmental employee for gross negligence, the employee's conduct must be "the one most immediate, efficient, and direct cause preceding an injury." [*Curtis, supra* at 563, quoting *Robinson v Detroit*, 462 Mich 439, 458-459, 462; 613 NW2d 307 (2000).]

Under the facts of this case, we cannot conclude that defendant's actions or inactions were "the one most immediate, efficient, and direct cause" of the accident. *Curtis, supra* at 563. Plaintiff's expert acknowledged that the road conditions were the proximate cause when he averred that, but for the icy conditions, Houser would have been able to safely stop his van within 54 to 60 feet. Nevertheless, plaintiff argues that Houser's alleged negligence was excused under the sudden emergency doctrine and that the doctrine prevented him from being considered a potential cause of the accident under the proximate cause analysis. This argument assumes that individual fault is a prerequisite to consideration as a proximate cause. However, causes that do not involve an individual's fault may be considered in proximate cause analysis. Several courts have determined that icy conditions can constitute a proximate cause of an injury. *Haliw v Sterling Heights*, 464 Mich 297, 310; 627 NW2d 581 (2001); *Davis v Pere Marquette R Co*, 241 Mich 166, 168; 216 NW 424 (1927); *Hopson v Detroit*, 235 Mich 248, 252; 209 NW 161 (1926), *Colovos v Dep't of Trans*, 205 Mich App 524, 527; 517 NW2d 803 (1994). In this case, the accident was primarily caused by the icy condition of the road and, therefore, defendant's conduct was not the "one most immediate, efficient, and direct cause" of plaintiff's injuries. The trial court properly granted summary disposition for defendant on the basis of government immunity under MCL 691.1407(2).[2]

Affirmed.

/s/ William C. Whitbeck
/s/ William B. Murphy
/s/ Michael R. Smolenski

[2] In light of this analysis, we need not consider defendant's remaining argument.